

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DANIELLE ROSENFELD and VINCENT
GARCIA, on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

TARA LENICH; CITY OF NEW YORK; LU-
SHAWN M. THOMPSON, AS
ADMINISTRATOR OF ESTATE OF
KENNETH P. THOMPSON; ERIC
GONZALEZ; MARK FELDMAN; WILLIAM
SCHAEFER; BRIAN DONOHUE; WILLIAM
POWER; MICHAEL DOWLING; JOSEPH
PIRAINO; and ROBERT KENAVAN,

Defendants.

No. 18 Civ. 6720 (NGG)(PK)

**DECLARATION OF
RICHARD D. EMERY**

RICHARD D. EMERY, an attorney duly admitted to practice before this Court and the courts of the State of New York, declares the following to be true under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am a partner in the firm Emery Celli Brinckerhoff Abady Ward & Maazel LLP (“ECBAWM”). Along with our co-counsel, Wiggin & Dana LLP (“Wiggin”), we represent Plaintiffs Danielle Rosenfeld, Vincent Garcia, and the conditionally certified settlement class. I submit this Declaration in further support of Plaintiffs’ motion for attorneys’ fees and for final approval of Plaintiffs’ settlement with the City of New York, Lu-Shawn M. Thompson, Eric Gonzalez, Mark Feldman, William Schaefer, Brian Donohue, William Power, Michael Dowling, Joseph Piraino, and Robert Kenavan (collectively, the “City Defendants”).

2. There are 331 Class Members total, including the Original Class Members and the Voicemail Class Members. *See* Declaration of Richard D. Emery, August 23, 2021, Dkt. 106 ¶¶ 43-44, 47 (defining Original Class Members and Voicemail Class Members).

3. Since Plaintiffs filed their motion for final approval, three additional Class Members have filed timely claims. *See* Declaration of Dana Boub, September 20, 2021 ¶ 4. As I explained in my prior declaration filed in support of this motion, the deadline for some late-identified Class Members (referred to in that declaration as the Voicemail Class Members) to submit Claim Forms and object to the Settlement was September 6, 2021. *See* Declaration of Richard D. Emery, August 23, 2021, Dkt. 106 ¶ 49.

4. As detailed further in Ms. Boub's declaration, a total of 162 Class Members have submitted valid claim forms. *See* Declaration of Dana Boub, September 20, 2021, ¶ 4. This represents 49% of all 331 Class Members.

5. RG/2 has calculated that each Award Unit will have a value of \$1,000, the maximum value of an Award Unit under the Settlement Agreement. *Id.* ¶ 6. When calculated with the maximum \$1,000 Award Unit, the timely submitted claims represent a total payout of \$1,286,500, including the anticipated service awards of \$15,000 to each Named Plaintiff. *Id.* ¶ 7.

6. As detailed in Ms. Boub's declaration, to date, no Class Member has opted out from or objected to the Settlement. *See id.* ¶ 8.

7. ECBAWM and Wiggin seek an award of attorneys' fees in the amount of \$1,066,666.66, representing one-third of the total Class Fund, as well as costs in an amount of \$31,655.20, to be paid from the Class Fund. As indicated in the below chart ECBAWM's costs include filing fees, service of process, discovery storage, courier services, and legal research. All

of these costs were reasonable, necessary, and actually incurred. All of these expenses are expenses that would normally be charged to a fee-paying client.

ECBAWM Costs

Category	Amount
Discovery Management	\$ 12,328.65
Legal Research	\$ 5,418.00
Process Server	\$ 2,750.00
Court Reporter	\$ 1,085.02
Filing Fee	\$ 400.00
Courier	\$ 115.62
Records	\$ 81.00
	\$ 22,178.29

8. The category of expenses described above as “discovery management” includes the expenses incurred by my firm for uploading, processing, and storing the discovery produced by the City Defendants on a relativity database maintained by an outside vendor. My firm’s practice is to only incur such discovery management expenses where, as here, the discovery produced in a case is voluminous. The category of expenses described as “legal research” includes the cost of using Westlaw to conduct legal research in this case. Neither category of expenses is part of the general overhead of the firm. To the contrary, ECBAWM typically bills its clients for costs associated with both discovery management and legal research.

9. The \$1,066,666.66 in attorneys’ fees sought by Class Counsel represents approximately 108% of Class Counsel’s current lodestar, which is \$ 987,174.50. This represents an increase of \$11,103 since the lodestar was calculated for my prior declaration. This increase is attributable to hours expended preparing Plaintiffs’ motion for final approval and attorneys’ fees and the supporting documents, including this reply.

10. As indicated in the below chart, which was created based on a review of contemporaneously created time records, the current lodestar for ECBAWM is \$616,964.50. While Class Counsel litigated this case on a contingency basis, the hourly attorney rates used in calculating the lodestars for ECBAWM and Wiggin are current rates the firms charge clients who pay hourly. The rates used by all counsel are also in line with prevailing market rates.

Calculated Lodestar for ECBAWM

Individual	Rate	Hours	Lodestar
Matthew D. Brinckerhoff	\$ 775.00	0.30	\$ 232.50
Richard Emery	\$ 900.00	317.40	\$ 285,660.00
Debbie Greenberger	\$ 550.00	2.90	\$ 1,595.00
Elizabeth Saylor	\$ 600.00	2.10	\$ 1,260.00
Sam Shapiro	\$ 500.00	295.40	\$ 147,700.00
Zoe Salzman	\$ 500.00	0.60	\$ 300.00
Ashok Chandran	\$ 425.00	0.40	\$ 170.00
Andrew Jondahl	\$ 425.00	2.30	\$ 977.50
David Berman	\$ 425.00	1.00	\$ 425.00
Emma Freeman	\$ 450.00	2.40	\$ 1,080.00
Jessica Clarke	\$ 450.00	96.30	\$ 43,335.00
Marissa Benavides	\$ 400.00	0.60	\$ 240.00
Noel Leon	\$ 425.00	1.00	\$ 425.00
Michele Yankson	\$ 425.00	8.10	\$ 3,442.50
Scout Katovich	\$ 400.00	282.40	\$ 112,960.00
Summer Associate	\$ 260.00	21.70	\$ 5,642.00
Paralegals	\$ 180.00	64.00	\$ 11,520.00
Total			\$ 616,964.50

11. As detailed in my prior declaration, my firm also represented Stephanie Rosenfeld in a lawsuit filed against Defendant Lenich and the City Defendants for claims arising out of Defendants' unlawful interception and recording of Ms. Rosenfeld's phone calls and text messages. *See Rosenfeld v. Lenich*, No. 17 Civ. 7299 (NGG) (PK) (E.D.N.Y.) ("*Rosenfeld I*").

12. ECBAWM assigned one matter number to *Rosenfeld I* and a different matter number to this class action lawsuit. The attorneys and paralegals who worked on these matters segregated their time by billing only to the matter to which the task pertained.

13. Where attorneys or paralegals worked on tasks that benefited both *Rosenfeld I* and this class action, they divided the time spent on such tasks between the two matter numbers. For example, the attorneys who attended the settlement conference with Magistrate Judge Kuo, which addressed both lawsuits, billed half of the hours spent at the conference to the matter number assigned to *Rosenfeld I* and the other half to the matter number assigned to this class action. Hours were never double billed to both lawsuits.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 20, 2021
New York, New York

/s/
RICHARD D. EMERY